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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/673,522
Filing Date: September 29, 2003
Appellant(s): HETTISH, MARK BERNARD

Randolph P. Calhoune
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/26/10 appealing from the Office action mailed 7/19/09.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Application Serial Number 10/673,390

Application Serial Number 10/673,846

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-7 and 10-20

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

2002/0116336	Diacakis et al.	8-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1-7 and 10-20** are rejected under 35 U.S.C. 102(b) as being anticipated by **Diacakis et al.** (US 2002/0116336, hereinafter "Diacakis").

In regards to **claim 1, Diacakis** teaches a method, comprising:

- interfacing an identity oriented context application that represents a context of an identity based on an availability of the identity with a device oriented context application that provides an availability of a device associated with the identity, where the identity is a person or a group of persons **(Diacakis; abstract; Fig. 1; Fig. 4 – presence detection engine interpreted as device oriented context application since it determines user's presence on particular devices, and availability management engine interpreted as identity oriented context application since it determines user's availability based on user's situation; par [0026] – *"the wireless telephone is switched off, then that person is not present on a telephone network, and thus unable to communicate with others on the telephone network."* – teaches that if the phone is in a status of "off" the person is not present because the phone is unavailable - therefore, the presence provides an availability of the device)**;
- detecting a new device oriented context provided by said device oriented context application for a specific device associated with an identity **(Diacakis; par [0034], lines 14-18; par [0035] – "*when the P&A management server 12 detects that the individual is at work, the server 12 transmits the individual's updated P&A information to the clients 22 for the individual's boss and spouse*"; par [0038]; par [0043]-par [0044] –**

"determine whether an individual is present on other devices such as, for example, a personal digital assistant (PDA) 50 or a pager 52"), wherein said new device oriented context provides an availability status of the specific device **(Diacakis; par [0026]** – ***"if a person is not near a landline telephone or wireless telephone, or the wireless telephone is switched off, then that person is not present on a telephone network, and thus unable to communicate with others on the telephone network. Similarly, if a person uses an instant messaging (IM) application at a given point in time, the person is present on that instant messaging network"*; par [0045] - *"determine the individual's current capabilities 58 such as, for example, whether he can receive voice information, data files, audio files, video files, etc."*; par [0053])** and the identity oriented context application and the device oriented context application are separate and distinct from each other **(Diacakis; Fig. 1; Fig. 4)**; and

- mapping said new device oriented context provided by said device oriented context application to an identity oriented context for said identity provided by said identity oriented context application by associating the new device oriented context with said identity oriented context, wherein said identity oriented context provides an availability status of said identity **(Diacakis; par [0056]** – ***"For example, in FIG. 8 Alex is available by telephone and instant messaging, but Tom is only available by telephone and Pete is only available by instant messaging."*; [0059]; Fig. 8 – identity oriented contexts may be for example, "at home" or "at office" and device oriented contexts may be for example whether the individual is available via phone, IM, etc.)**; and

- providing data indicative of said mapped identity oriented context to said identity context oriented application **(Diacakis; par [0030]; par [0056]; par [0059]; Fig. 8)**.

In regards to **claim 2**, **Diacakis** teaches the method of claim 1, wherein said detecting said new device oriented context for said device includes detecting said new device oriented context in a presence and availability service **(Diacakis; Fig. 1)**.

In regards to **claim 3**, **Diacakis** teaches the method of claim 1, wherein said detecting said new device oriented context for said device includes receiving a request to change said device's device context **(Diacakis; par [0034], lines 14-18)**.

In regards to **claim 4**, **Diacakis** teaches the method of claim 1, wherein said mapping said new device oriented context to said identity oriented context for said identity includes determining said identity **(Diacakis; par [0056]; Fig. 8)**.

In regards to **claim 5**, **Diacakis** teaches the method of claim 1, wherein said mapping said new device oriented context to said identity oriented context for said identity includes determining said identity context **(Diacakis; par [0056]; par [0059]; Fig. 8)**.

In regards to **claim 6**, **Diacakis** teaches the method of claim 1, further comprising:

- determining said identity **(Diacakis; par [0056]; Fig. 8)**.

In regards to **claim 7**, **Diacakis** teaches the method of claim 1, further comprising:

- determining said identity context **(Diacakis; par [0056]; par [0059]; Fig. 8)**.

In regards to **claim 10**, **Diacakis** teaches the method of claim 1, further comprising:

- receiving a request to make a change to a new identity oriented context for an identity **(Diacakis; par [0034], lines 14-18; par [0056]; par [0059]; Fig. 8)**; and
- mapping said new identity oriented context to a device context for a device associated with said identity **(Diacakis; par [0056]; par [0059]; Fig. 8)**.

In regards to **claim 11**, **Diacakis** teaches the method of claim 1, further comprising:

- receiving a request to make a change to a new identity oriented context for a second identity **(Diacakis; par [0034], lines 14-18; par [0056]; par [0059]; Fig. 8)**; and
- mapping said new identity oriented context to a device oriented context for a device associated with said second identity **(Diacakis; par [0056]; par [0059]; Fig. 8)**.

In regards to **claim 12**, **Diacakis** teaches the method of claim 11, wherein said receiving said request to make said change to a new identity oriented context for said second identity includes receiving said request from an identity context oriented application **(Diacakis; par [0034], lines 14-18; par [0036])**.

In regards to **claim 13**, **Diacakis** teaches the method of claim 11, wherein said mapping said new identity oriented context to said device context for said device associated with said second

identity includes determining said device associated with said second identity **(Diacakis; par [0056]; par [0059]; Fig. 8)**.

In regards to **claim 14**, **Diacakis** teaches the method of claim 13, wherein said mapping said new identity oriented context to said device context for said device associated with said second identity includes determining said device oriented context associated with said device associated with said second identity **(Diacakis; par [0056]; par [0059]; Fig. 8)**.

In regards to **claim 15**, **Diacakis** teaches the method of claim 11, wherein said mapping said new identity oriented context to said device context for said device associated with said second identity includes accessing a mapping table **(Diacakis; Fig. 2; Fig. 5; Fig. 8)**.

In regards to **claim 16**, **Diacakis** teaches the method of claim 1, further comprising:

- providing data indicative of said device oriented context to a presence and availability service **(Diacakis; Fig. 1; par [0034], lines 14-18; par [0035], par [0038]; par [0043]-par [0044]; Fig. 8)**.

In regards to **claim 17**, **Diacakis** teaches the method of claim 11, further comprising:

- changing an identity oriented context for said second identity from a first identity oriented context to a said new identity oriented context in response to said request **(Diacakis; par [0034], lines 14-18; par [0056]; par [0059]; Fig. 8)**.

Claims 18-20 are each rejected with the same rationale given for claim 1.

(10) Response to Argument

Claims 1-7 and 10-20 are Patentable

Appellant argues that Diacakis does not teach the claimed device oriented context application that is separate and distinct from an identity oriented context application, and mapping a new device oriented context to the identity oriented context.

Specifically, appellant argues that Diacakis does not teach the claimed device oriented context application that is separate and distinct from an identity oriented context application. The examiner respectfully disagrees and asserts that Diacakis teaches two separate and distinct applications that correspond to the claimed identity oriented context application (Diacakis; Figs. 1 and 4, reference character 20) and the claimed device oriented context application (Diacakis; Figs. 1 and 4, reference character 18). The Presence Detection Engine of Diacakis, depicted in Fig. 1 and Fig. 4, reference character 18, of Diacakis, clearly constitutes the claimed device oriented context application.

The appellant incorrectly argues at page 8 of the Appeal Brief that the examiner is interpreting the P&A management server 12 of Diacakis to be equivalent to the claimed device oriented context application. This is not accurate. Rather, as set forth in the rejections above, the examiner is interpreting the Presence Detection Engine 18 of Diacakis to be equivalent to the claimed device oriented context application since it determines a user's presence on particular devices based on the availability of the devices (Diacakis; Fig. 1; Fig. 4; par [0026]).

Specifically, appellant argues that Diacakis determines a *user's* presence and not the availability of a *device*. The examiner respectfully disagrees and asserts that Diacakis clearly determines the availability of a device on a network by determining presence information for the device (Diacakis; par [0044]-[0045]), including determining whether a device is switched on/off (Diacakis; par [0026]).

For example, par [0026] of Diacakis recites, in part, "*the wireless* ***telephone is switched off****, then that person is not present on a telephone network, and thus unable to communicate with others on the telephone network.*" This teaches that if the phone is in a status of "off" the person is not present because ***the phone is unavailable***. Therefore, the presence provides an availability of the device, i.e. unavailable. Par [0045] of Diacakis recites, in part, "*Based on* ***the presence information on such devices 44-52****, the presence detection engine 18 may determine additional information about the individual"* and "*based on information regarding each of these devices 44-53 the presence detection engine 18 may determine the individual's current capabilities 58 such as, for example, whether he can receive voice information, data files, audio files, video files, etc.*" Therefore, Diacakis explicitly mentions determining presence information about particular **devices**.

Appellant goes on to argue that, in Diacakis, the presence detection engine is related to and oriented towards an individual, and not a device. The examiner respectfully asserts that, even assuming that is true, that does not in any way diminish the fact that Diacakis still teaches determining the context of particular devices, as evidenced above. Diacakis then uses the device oriented context information along with other information to determine a true availability of an identity, as set forth in the rejection above. More importantly, the examiner respectfully asserts

that, as cited by the appellant on page 6 of the Appeal Brief, the appellant's own specification recites the following at page 5, lines 15-21 with respect to device oriented contexts: "***An identity may have one or more devices associated with it. Each device may have an associated device context. Context for a device may describe the work or non-work state, and/or the availability or non-availability state, that the device is in***. *For example, the person's office telephone may be busy, set to "do not disturb," automatic call forwarding, offline, etc.*" Therefore, the device oriented contexts, even according to the appellant's specification are related to and oriented towards an individual, or identity, at least in as much as the device oriented contexts of Diacakis are. In other words, in both Diacakis and the claimed invention, the devices are associated with an individual and the context of the device is used to determine the availability of the individual. Clearly, to determine an individual's presence on a device, the presence of the device is necessarily determined as well. For example, for a user to be present on a telephone or pda, the telephone or pda must be on and in an available communication network. Likewise, if a telephone or pda is determined to be off or unavailable, the user cannot be available on that device. However, just because the context and availability of the device naturally affects the context and availability of the associated individual does not take away from the fact that the context and availability of the device is indeed determined. Clearly, determining that a telephone is "off" constitutes determining an availability status of a specific device associated with an individual.

Appellant also argues that there is no disclosure or suggestion in Diacakis of the "presence detection engine 18" being the same as, analogous to, or equivalent to the claimed "device oriented context application." The examiner respectfully disagrees. The claimed device

oriented context application "represents the context of the identity based on an availability or state of a device associated with the identity," which is precisely what the presence detection engine of Diacakis does when it determines the availability or state of a device associated with an individual (Diacakis; par [0026]; par [0045]).

Lastly, appellant states at page 10 of the Appeal Brief that the appellant agrees with the examiner's statement that the presence detection engine of Diacakis "determines a user's presence on particular devices." However, the appellant uses this to argue that the presence is therefore related to the user and not the device. The examiner respectfully asserts that, as explained above, determining a user's presence **on a device** necessarily includes, in the teachings of Diacakis, determining the status and availability **of the device**.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/K. P./

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